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6
7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF YAVAPAI**

9
10 STATE OF ARIZONA,

11 Plaintiff,

12 vs.

13 STEVEN CARROLL DEMOCKER,

14 Defendant.

Case No. P1300CR20081339

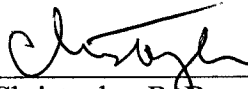
15 **MOTION TO RELEASE PERSONAL**
16 **PROPERTY**

Honorable Thomas Lindberg Division 6

17 Comes now the victim Katherine Gray DeMocker, by and through undersigned counsel,
18 and requests this Court enter Its order directing the Yavapai County Sheriff to return her personal
19 property that was seized in July 2008. This motion is made pursuant A.R.S. §13-3922, Article 2,
20 §§4 and 8 of the Arizona Constitution and Amendments IV and XIV of the Constitution of the
21 United States of America. This motion is more fully substantiated in the accompanying
22 Memorandum of Points and Authorities which is hereby incorporated by reference and will be
supplemented at evidentiary hearing.

23 Respectfully submitted this 22nd day of January 2010.
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2 TRAUTMAN DUPONT PLC

3 By 
4 Christopher B. Dupont
5 Attorney for Victims

6 Original Mailed for Filing this
7 22nd day Of January 2010, to:

8 Clerk of Court, Yavapai County

9 Copies e-mailed this
10 22nd day Of January 2010, to:

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MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACT

On July 3, 2008, in an attempt to collect evidence against the defendant, Steven DeMocker, the Yavapai County Sheriff's Office ("YCSO") served warrants at two addresses in Prescott, Arizona: 7485 Bridal Path, and 1716 Alpine Meadows Lane #1405. During searches at the two locations, Deputies seized the sole and separate property of Katherine DeMocker.¹ YCSO then returned to the address at 7485 on July 8, 2008 to serve another warrant and seize additional property of Ms. DeMocker.

Deputies did not have probable cause to seize the property of Katherine DeMocker at the time of seizure and have not developed cause since the time of seizure.

Ever since her property was taken, Ms. DeMocker has attempted to secure the return. Almost immediately after seizure, she spoke with Deputy Doug Brown. She wanted to get family photos from her computer so she could prepare for her mother's memorial service. Detective Brown told her he would give her a copy of the hard drive – he never did. Since then, we have sent several requests to Deputy County Attorney Joe Butner requesting he facilitate return of Ms. DeMocker's property. At first, Mr. Butner told undersigned counsel that he would attempt to facilitate return by the Christmas Holiday he later wrote to say there would be a delay; as of this date, he has not responded to a phone message left January 4, 2010 to discuss the status of the property.

The defense must therefore ask this Court to intervene and order restoration of the property to its rightful owner, Katherine DeMocker.

¹ See attached Exhibit A - Property List.

1 STATEMENT OF LAW

2 No person in the state of Arizona may be deprived of their property without due process
3 of law and no person may be disturbed in her private affairs. Arizona Constitution, Article 2, §§
4 4 and 8. The United States Constitution ensures the same rights through Amendments IV and
5 XIV.

6 With respect to property that is not subject to forfeiture, the Arizona legislature has
7 provided a procedure for return of property that has no evidentiary value and has not been seized
8 pursuant to probable cause. A.R.S. §13-3922 allows an aggrieved person to controvert a warrant
9 and demand restoration of property when there was no probable cause to believe the items were
10 subject to seizure. When such aggrieved person controverts the warrant, the Magistrate is then
11 required to take testimony and subsequently cause the property to be returned unless the property
12 is subject to forfeiture or its possession would constitute a criminal offense. *Id.*

13
14 In this case, there is no probable cause to believe that Katherine DeMocker's property
15 constitutes evidence of any criminal offense, it is not subject to forfeiture, and its possession
16 would not constitute a criminal offense.

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18 Therefore, Ms. DeMocker requests this Court issues Its order directing the Yavapai
19 County Sheriff return the property listed in Exhibit A.
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EXHIBIT A

KATHERINE DeMOCKER LIST OF PERSONAL PROPERTY

Item #	Description of Property	Location of Seizure
415	Apple Laptop W87223D8x41	1716 Alpine Meadow
504	Cannon Powershot A80 Digital Camera	7485 Bridal Path
512	256 MB jump drive	7485 Bridal Path
550	Black zip case with two jump drives	7485 Bridal Path
552	Panasonic camera DMCCT23 and Sundisk digital card Lexar 512 MB	7485 Bridal Path
835	IBM computer tower	7485 Bridal Path ¹

¹ This seizure occurred on July 8, 2008.